

No. 12741

United States
Court of Appeals
for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

WALTER W. GRAMER, Claimant of 213
BOTTLES, more or less, etc., and Claimant of
143 Bottles, more or less, of an article of drug,
etc.,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Western District of Washington,
Northern Division.

FILED

JAN 8 1961

PAUL F. O'BRIEN,

CLERK

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vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF PROCTORS

J. CHARLES DENNIS,

1017 U. S. Court House,
Seattle, Washington,

Proctor for Appellant.

TODD, HOKANSON & WHITE,

682 Dexter Horton Building,
Seattle, Washington,

Proctors for Appellee.

In The District Court of the United States for the
Western District of Washington, Northern
Division

No. 15432

F.D.C. No. 28679

UNITED STATES OF AMERICA,

Libelant,

vs.

143 BOTTLES, More or Less, of an Article of
Drug Labeled in Part: "4 FLUID OUNCES
GRAMER'S SULGLY-MINOL, a Solution of
Sulphur, Glycerine, Sulphurated Lime and
Isopropyl Alcohol 6%," Together With 200
Leaflets, More or Less, Entitled: "Arthritis—
Hundreds Claim Its Grip Broken," and 200
Leaflets, More or Less, Entitled: "A Light
Should Not Be Hidden,"

Respondent.

LIBEL OF INFORMATION

To The Honorable Judges of the United States
District Court for The Western District of Wash-
ington.

Now comes the United States of America, by
J. Charles Dennis, United States Attorney for the
Western District of Washington, and shows to the
Court:

I.

That this libel is filed by the United States of
America and prays seizure and condemnation of a

certain article of drug, as hereinafter set forth, in accordance with the Federal Food, Drug and Cosmetic Act, (21 U.S.C. 301 et seq.).

II.

That Walter W. Gramer shipped in interstate commerce from Minneapolis, Minnesota, to Seattle, Washington, via Consolidated Freightways, Inc., on or about October 15, 1949, an article of drug consisting of 143 Bottles more or less, labeled in part: "4 Fluid Ounces Gramer's Sulgly-Minol a Solution of Sulphur, Glycerine, Sulphurated Lime and Isopropyl Alcohol 6%," together with the accompanying leaflets: Approx. 200, more or less, entitled "Arthritis—Hundreds Claim Its Grip Broken," and 200, more or less, entitled "A Light Should Not Be Hidden."

III.

That the aforesaid article was Misbranded in interstate commerce, within the meaning of said Act, 21 U.S.C. Sec. 352(a) in that the label statement "for the treatment of muscular pains, apply to soles of feet before retiring" and the statements appearing in the accompanying leaflets are false and misleading in this, that such statements represent and suggest that the article is effective as a treatment, cure and preventive for rheumatism and arthritic conditions and as a treatment for boils and acne, whereas, said article is not effective as a treatment, cure and preventive for rheumatism and arthritic conditions and is not effective as a treatment for boils and acne.

IV.

That the aforesaid article is in the possession of Dolan's Vital Foods, 1308 South Third Street, Mount Vernon, Washington, or elsewhere within the jurisdiction of this Court.

V.

That by reason of the foregoing, the aforesaid article is held illegally within the jurisdiction of this court, and is liable to seizure and condemnation pursuant to the provisions of said Act, 21 U.S.C., 334.

Wherefore, libellant prays that process in due form of law according to the course of this Court in cases of admiralty jurisdiction issue against the aforesaid article; that all persons having any interest therein be cited to appear herein and answer the aforesaid premises; that this Court decree the condemnation of said article and grant libellant the costs of this proceeding against the claimant herein; that the aforesaid article be disposed of as this Court may direct pursuant to the provisions of said Act; and that libellant have such other and further relief as the case may require.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ JOHN F. DORE,
Assistant United States
Attorney.

United States of America,
Western District of Washington,
Northern Division—ss.

John F. Dore, being first duly sworn, on oath deposes and says: That he is a duly appointed, qualified and acting Assistant United States Attorney for the Western District of Washington; that the facts set forth in the foregoing libel of condemnation are true as he verily believes; that he makes this verification for the reason that he is authorized to bring this libel by the Federal Security Agency, and that he has prepared the foregoing libel and makes the allegations therein contained upon information furnished him by the Federal Security Agency of the United States.

/s/ JOHN F. DORE,

Subscribed and sworn to before me this 10th day of January, 1950.

[Seal] /s/ LEE L. BRUFF,
Deputy Clerk, United States District Court, Western District of Washington.

[Endorsed]: Filed January 10, 1950.

[Title of District Court and Cause.]

No. 15432

F. D. C. No. 28679

ANSWER

Comes now Walter W. Gramer, claimant herein, and for answer to the United States of America libel of information, admits, denies and alleges as follows:

I.

Answering paragraph I thereof, claimant admits that the libel was filed by the United States of America and that said libel prays seizure and condemnation of a certain article of drug, but denies that said libel and seizure are in accordance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.).

II.

Answering paragraph II thereof, claimant admits the same.

III.

Answering paragraph III thereof, claimant denies the same and each and every allegation therein contained.

IV.

Answering paragraph IV, claimant admits that the articles therein mentioned were in the possession of the persons alleged, but denies that they are now in the possession of said persons.

V.

Answering paragraph V, claimant denies the

same and each and every allegation therein contained.

For further answer and affirmative defense to said libel of information, claimant alleges:

I.

The issues raised by the libel were adjudicated in favor of the claimant in an action entitled "United States vs. Walter W. Gramer," Criminal Cause No. 7984 in the District Court of the United States in and for the District of Minnesota, Fourth Division. The described action was dismissed after a trial before the Honorable Matthew M. Joyce, sitting without a jury, on or about April 6, 1949. All of the issues raised in the libel in the instant case were adjudicated in claimant's favor in the described action in Minnesota.

Wherefore, having fully answered United States of America's libel of information, claimant prays that the libel of information herein be dismissed with costs.

TODD, HOKANSON & WHITE,

/s/ RUSSELL V. HOKANSON,

Attorneys for Claimant.

United States of America,
Western District of Washington,
Northern Division—ss.

Russell V. Hokanson, being first duly sworn, upon oath deposes and says: That he is one of the attorneys for claimant in the above action and that

he makes this verification for and on behalf of said claimant, being authorized so to do; that he has read the within and foregoing answer, knows the contents thereof and believes the same to be true.

/s/ RUSSELL V. HOKANSON,

Subscribed and sworn to before me this 15th day of May, 1950.

/s/ STUART W. TODD,

Notary Public in and for the State of Washington,
residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed May 16, 1950.

United States District Court, Western District of
Washington, Northern Division

No. 15426

F.D.C. No. 28497

UNITED STATES OF AMERICA,

Libelant,

vs.

213 BOTTLES, More or Less, and 10 BOTTLES,
More or Less, of an Article of Drug Labeled in
Part: "4 FLUID OUNCES GRAMER'S
SULGLY-MINOL, a Solution of Sulphur,
Glycerine, Sulphurated Lime and Isopropyl
Alcohol 6%," Together with the Following
Leaflets: Approximately 1000 Leaflets Entitled
"Arthritis — Hundreds Claim Its Grip
Broken," and Approximately 1000 Leaflets
Entitled "A Light Should Not Be Hidden,"
Respondent.

LIBEL OF INFORMATION

To The Honorable Judges of the United States
District Court for The Western District of
Washington.

Now comes the United States of America, by
J. Charles Dennis, United States Attorney for the
Western District of Washington, and shows to the
Court:

I.

That this libel is filed by the United States of
America and prays seizure and condemnation of a

certain article of drug, as hereinafter set forth, in accordance with the Federal Food, Drug and Cosmetic Act, (21 U.S.C. 301 et seq.).

II.

That Walter W. Gramer shipped in interstate commerce from Minneapolis, Minnesota, to Seattle, Washington, via Consolidated Freightways, on or about October 17, 1949, and November 22, 1949, an article of drug consisting of 213 bottles, more or less, and 10 bottles, more or less, labeled in part: "4 Fluid Ounces Gramer's Sulgly-Minol, a Solution of Sulphur, Glycerine, Sulphurated Lime and Isopropyl Alcohol 6%," together with the following leaflets: Approximately 1000 leaflets entitled "Arthritis—Hundreds Claim Its Grip Broken," and approximately 1000 leaflets entitled "A Light Should Not Be Hidden."

III.

That the aforesaid article was Misbranded in interstate commerce, within the meaning of said Act, 21 U.S.C., 352(a) in that the label statement and the statements in the above-entitled leaflets are false and misleading as the article is not effective as a treatment, cure and preventive for rheumatism and arthritic conditions and is not effective as a treatment for boils and acne.

IV.

That 213 bottles, more or less, of the aforesaid article are in the possession of Dr. McCormick's Natural Foods, 1918 Third Avenue, Seattle, and 10

bottles, more or less, of the aforesaid article are in the possession of Dr. McCormick's Natural Foods, 1313 Third Avenue, Seattle, together with the following leaflets: Approximately 1000 leaflets entitled "Arthritis—Hundreds Claim Its Grip Broken," and approximately 1000 leaflets entitled "A Light Should Not Be Hidden."

V.

That by reason of the foregoing, the aforesaid article is held illegally within the jurisdiction of this court, and is liable to seizure and condemnation pursuant to the provisions of said Act, 21 U.S.C., 334.

Wherefore, libelant prays that process in due form of law according to the course of this Court in cases of admiralty jurisdiction issue against the aforesaid article; that all persons having any interest therein be cited to appear herein and answer the aforesaid premises; that this Court decree the condemnation of said article and grant libelant the costs of this proceeding against the claimant herein; that the aforesaid article be disposed of as this Court may direct pursuant to the provisions of said Act; and that libelant have such other and further relief as the case may require.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

United States of America,
Western District of Washington,
Northern Division—ss.

John E. Belcher, being first duly sworn, on oath deposes and says: That he is a duly appointed, qualified and acting Assistant United States Attorney for the Western District of Washington; that the facts set forth in the foregoing libel of condemnation are true as he verily believes; that he makes this verification for the reason that he is authorized to bring this libel by the Federal Security Agency, and that he has prepared the foregoing libel and makes the allegations therein contained upon information furnished him by the Federal Security Agency of the United States.

/s/ JOHN E. BELCHER,

Subscribed and sworn to before me this 3rd day of January, 1950.

[Seal] /s/ WALLACE W. PETERSON,
Deputy Clerk, United States District Court, Western District of Washington.

[Endorsed]: Filed January 3, 1950.

[Title of District Court and Cause.]

No. 15426

F.D.C. No. 28497

ANSWER

Comes now Walter W. Gramer, claimant herein, and for answer to the United States of America libel of information, admits, denies and alleges as follows:

I.

Answering paragraph I thereof, claimant admits that the libel was filed by the United States of America and that said libel prays seizure and condemnation of a certain article of drug, but denies that said libel and seizure are in accordance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.).

II.

Answering paragraph II thereof, claimant admits the same.

III.

Answering paragraph III thereof, claimant denies the same and each and every allegation therein contained.

IV.

Answering paragraph IV, claimant admits that the articles therein mentioned were in the possession of the persons alleged, but denies that they are now in the possession of said persons.

V.

Answering paragraph V, claimant denies the

same and each and every allegation therein contained.

For further answer and affirmative defense to said libel of information, claimant alleges:

I.

The issues raised by the libel were adjudicated in favor of the claimant in an action entitled "United States vs. Walter W. Gramer," Criminal Cause No. 7984 in the District Court of the United States in and for the District of Minnesota, Fourth Division. The described action was dismissed after a trial before the Honorable Matthew M. Joyce, sitting without a jury, on or about April 6, 1949. All of the issues raised in the libel in the instant case were adjudicated in claimant's favor in the described action in Minnesota.

Wherefore, having fully answered United States of America's libel of information, claimant prays that the libel of information herein be dismissed with costs.

TODD HOKANSON & WHITE,

/s/ RUSSELL V. HOKANSON,

Attorneys for Claimant.

United States of America,
Western District of Washington,
Northern Division—ss.

Russell V. Hokanson, being first duly sworn, upon oath deposes and says: That he is one of the attorneys for claimant in the above action, and that

he makes this verification for and on behalf of said claimant, being authorized so to do; that he has read the within and foregoing answer, knows the contents thereof and believes the same to be true.

/s/ RUSSELL V. HOKANSON.

Subscribed and sworn to before me this 15th day of May, 1950.

[Seal] /s/ STUART W. TODD,
Notary Public in and for the State of Washington,
residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed May 16, 1950.

In The District Court of the United States for the
Western District of Washington, Northern Di-
vision

No. 15426

F. D. C. No. 28497

UNITED STATES OF AMERICA,

Libelant,

vs.

213 BOTTLES, More or Less, and 10 BOTTLES,
More or Less of an Article of Drug Labeled in
Part: "4 FLUID OUNCES GRAMER'S
SULGLY-MINOL, a Solution of Sulphur,
Glycerine, Sulphurated Limes and Isopropyl
Alcohol 6%," etc.

Respondent,

and

No. 15432

F. D. C. No. 28679

UNITED STATES OF AMERICA,

Libelant,

vs.

143 BOTTLES, More or Less, of an Article of
Drug Labeled in Part: "4 FLUID OUNCES
GRAMER'S SULGLY-MINOL, a Solution of
Sulphur, Glycerine, Sulphurated Lime and
Isopropyl Alcohol 6%," etc.

Respondent.

ORDER CONSOLIDATING CAUSES

These causes came on to be heard on motion of claimant, Walter W. Gramer, for an order consolidating them, and it appearing that they involve common questions of law and fact and that consolidation will reduce costs and delay,

It Is Ordered:

1. That the above-entitled actions be and they are hereby consolidated.

2. That the consolidated action shall carry the titles of both of the above causes, but shall be civil action No. 15426 and that the clerk shall make all entires of further proceedings under that cause number.

Done In Open Court this 22nd day of May, 1950.

/s/ JOHN C. BOWEN,
Judge.

Presented By:

/s/ RICHARD S. WHITE, of
TODD, HOKANSON & WHITE,
Attorneys for Claimant.

Approved by:

/s/ J. CHARLES DENNIS,
U. S. Attorney.

[Endorsed]: Filed May 22, 1950.

[Title of District Court and Cause.]

No. 15426

MOTION TO STRIKE

To the Honorable Judges of the United States District Court for the Western District of Washington.

Now comes the United States of America, by J. Charles Dennis, United States Attorney for the Western District of Washington, and pursuant to amended Civil Rule 12(f) moves the Court to strike the Affirmative Defense in the Answers filed in this consolidated action.

Said defense is insufficient since the judgment of dismissal in a criminal case, where the burden of proof is "beyond a reasonable doubt," can not be res judicata in the instant consolidated action, where the burden of proof is "by a preponderance of the evidence."

/s/ J. CHARLES DENNIS,
United States Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed June 5, 1950.

[Title of District Court and Cause.]

No. 15426

ORDER DENYING LIBELANT'S
MOTION TO STRIKE

This matter having come on before the above-entitled court on libelant's motion to strike the affirmative defense in the answers filed in this consolidated action, and libelant being represented by J. Charles Dennis, United States Attorney, and Arthur Dickerman, Esquire, and claimant being represented by his attorneys, Todd, Hokanson & White, by Richard S. White, and briefs having been submitted by both counsel, and arguments having been heard by both counsel, and the court being fully advised in the premises,

Now, Therefore, It Is Ordered that libelant's motion to strike the affirmative defense in the answers filed in this consolidated action be and the same is hereby overruled and denied.

Done in open court this 28th day of August, 1950.

/s/ JOHN C. BOWEN,

Judge.

Approved by:

/s/ RICHARD S. WHITE, of
TODD, HOKANSON & WHITE,
Attorneys for Claimant.

Approved as to Form and Presentation Waived.

/s/ ARTHUR A. DICKERMAN,
Attorney for Libelant.

[Endorsed]: Filed August 28, 1950.

[Title of District Court and Cause.]

No. 15426

STIPULATION

It Is Hereby Stipulated by and between the United States of America, by its attorneys, J. Charles Dennis, United States Attorney, and John F. Dore, Assistant United States Attorney and Walter W. Gramer, claimant herein, by his attorneys, Todd, Hokanson & White and Richard S. White, that

1. The contents of the bottles of Gramer's Sulgly-Minol seized by the United States, as libelant in the above-captioned consolidated action, are identical in all material respects with the contents of the bottles of Gramer's Sulgly-Minol which were in issue and which are described in the information in Cause No. 7984-Crim. (F.D.C. No. 25586) United States District Court, District of Minnesota, Fourth Division, entitled "United States of America vs. Walter W. Gramer."

2. The chemical composition of the Sulgly-Minol described in paragraph 1 above is approximately as follows:

Total Sulphur . . . 10.84% — 1 lb. per gal.

Lime 4.77% — ½ lb. per gal.

Glycerine 5.68% — ½ lb. per gal.

Isopropyl Alcohol 6.30% — ½ lb. per gal.

p-H 10.4

Sulgly-Minol is compounded by putting elemental

sulphur and hydrated lime in Minneapolis City tap water, heating this mixture, allowing it to settle, thereafter decanting and adding glycerine and isopropyl alcohol to the decanted portion, and immediately bottling without filtration.

3. All labeling and literature, including bottle labels, circulars and pamphlets in issue in the above-captioned consolidated cause are in all material respects the same as those which were in issue in said Cause No. 7984.

4. Walter W. Gramer, claimant herein, is one and the same person as Walter W. Gramer, the defendant in the said Cause No. 7984. The certified copies of the information and judgment of dismissal in said Cause No. 7984, attached hereto and marked respectively "Exhibit A" and "Exhibit B," are true and correct copies of the information and judgment of dismissal filed in said Cause No. 7984. Subsequent to the filing of the information in said Cause No. 7984, Walter W. Gramer entered a plea of not guilty and after a trial on the merits of the issue of whether the drug was misbranded within the meaning of 21 U. S. C. 352(a), the United States District Court of Minnesota, Fourth Division, adjudged Walter W. Gramer not guilty of the crime charged by the said information, pursuant to which the judgment of dismissal, a copy of which is annexed hereto as "Exhibit B" was entered therein.

5. Attached hereto and marked "Exhibit C" and "Exhibit D" respectively are a copy of the leaflet "Arthritis—Hundreds Claim Its Grip Broken" and a copy of the leaflet "A Light Should Not Be Hidden." Said leaflets are referred to in the Libel of

Information filed in the instant cause. Said leaflets are a part of the labeling of the aforesaid Sulgly-Minol.

Dated this 28th day of August, 1950.

/s/ J. CLARK DENNIS,
United States Attorney.

/s/ ARTHUR A. DICKERMAN,
Attorney, U. S. Food and
Drug Administration.

WALTER W. GRAMER,
Claimant, by

TODD, HOKANSON & WHITE,
/s/ RICHARD S. WHITE,
Proctors for Claimant.

EXHIBIT A

F. D. C. No. 25586

In the District Court of the United States for
the District of Minnesota; Fourth Division

No. 7984 Crim.

UNITED STATES OF AMERICA

vs.

WALTER W. GRAMER

(21 U. S. C. 331 and 333)

Count I

The United States Attorney charges:

That Walter W. Gramer, an individual, trading

and doing business at Minneapolis, State of Minnesota, did, within the District of Minnesota, on or about April 16, 1948, in violation of the Federal Food, Drug, and Cosmetic Act, unlawfully cause to be introduced and delivered for introduction into interstate commerce at Minneapolis, State of Minnesota, for delivery to Eau Claire, State of Wisconsin, consigned to Fred J. Fasching, a number of bottles containing a drug;

That displayed upon said bottles, when caused to be introduced and delivered for introduction into interstate commerce as aforesaid, was certain labeling, to wit, the following printed and graphic matter:

4 Fluid Ounces

Gramer's Sulgly-Minol

A Solution of Sulphur, Glycerine, Sulphurated Lime and Alcohol 1%

For External Use Only

For treatment of muscular pains, apply to soles of feet before retiring. Or add to bath water for sulphur bath. Add two tablespoons to one gallon of water for treatment of athlete's foot.

Compounded and Developed by

Walter W. Gramer

Minneapolis, Minnesota

Distributor Fred J. Fasching

1110 Birch Street, Eau Claire, Wis.

That accompanying said drug was additional la-

belong relating to said drug namely a number of circulars entitled "Arthritis Its Grip Broken" and "A Light Should Not Be Hidden." The said Walter W. Gramer shipped the said circulars to said Fred J. Fasching on or about May 15, 1948, as part of the same interstate transaction and distributional scheme, intending that they be placed with said drug and used together with it by said consignee. Said circulars were received by said consignee.

That said drug, when caused to be introduced and delivered for introduction into interstate commerce as aforesaid, was misbranded within the meaning of 21 U. S. C. 352(a) in that the aforesaid labeling of said drug contained statements which represented and suggested that said drug when applied to the soles of the feet before retiring would be efficacious in the treatment of muscular pains, that said drug would be efficacious in the relief and in the treatment of arthritis, and that said drug would be efficacious in the treatment of boils, acne and ailments of a rheumatic nature, that said drug would relieve one from the pains of arthritis and rheumatism and that said drug would take stiffness and soreness out of one's legs and knees, which statements in said labeling were false and misleading in that said drug would not fulfill the promises of benefit stated and implied by said statements.

/s/ JOHN W. GRAFF,

United States Attorney for
the District of Minnesota.

[Endorsed]: Filed Nov. 30, 1948.

EXHIBIT B

In the District Court of the United States in and
for the District of Minnesota, Fourth Division

Criminal Term Minutes

March Term, A.D. 1949

April 6, 1949

Wednesday morning.

Court opened pursuant to adjournment.

Present: Honorable Matthew M. Joyce, Judge.

(Before Joyce, J.)

No. 7984 Crim.

THE UNITED STATES

vs.

WALTER W. GRAMER

The above-entitled cause coming on this day for
further trial to the Court, pursuant to adjournment,
the following proceedings are had:

Mr. Hansen sums up the case to the Court in
behalf of the plaintiff.

Mr. Logefeil sums up the case to the Court
in behalf of the defendant.

Whereupon said action is duly submitted to
the Court and after due and mature considera-
tion, it is

Ordered and Adjudged: that said defendant,
Walter W. Gramer, is not guilty as charged and
that the Information herein be, and the same is
hereby dismissed and the defendant discharged.

EXHIBIT C

Arthritis

Hundreds Claim Its Grip Broken One Bottle Will Tell

- In June, 1940, two hundred letters, like the one enclosed, were mailed to people living within fifty miles of Wayzata, Minn., where the merits of "Sulgly-Minol" were first discovered, telling people of the marvelous results obtained by using "Sulgly-Minol" (Sulphur Solution) to obtain relief from Arthritis.
- Since that time, thousands of bottles have gone out to sufferers of this painful ailment. People who had given up hope of being well again (ranging from eighteen to eighty years of age) have been put back on their feet and can again live a normal and happy life. In many cases this was accomplished for the price of one bottle.
- If you are suffering from Arthritis or if you know someone who is, don't you agree that here is something too good to pass up? Many, many have thanked me sincerely from the bottom of their hearts, for telling them.
- By all means try "Sulgly-Minol" and tell others about it. It has certainly knocked Arthritis in my case and hundreds of others have claimed similar results.
- Attached is the letter used to introduce "Sulgly-Minol" (Sulphur Solution). Every word is true; please read it and pass it on.

- Full Instructions Are Given with Each Bottle.
- Simple—Inexpensive—Effective.

(Used Externally)

Copy of Original Letter

Dear Friend:

Do you have Arthritis? Have you a relative or friend that is suffering from this painful distressing ailment?

I have come across a simple remedy, which has ended my long search and battle, to rid myself of Arthritis. I had teeth pulled, tonsils out, serum shots, electric fever treatments, special built shoes, hot baths, pills and salves. The Arthritis withstood them all, and examinations in several of the best known clinics could detect nothing. Finally, I discovered Sulgly-Minol. Today, after seven months, I am more free of pain and soreness than at any time in twenty years. Can work ten hours a day, with nothing more than tired feet. Legs, hips, back, neck, and arms are practically free of pain and soreness. This has cost me less than six dollars.

This is all I did, and all you will have to try Sulgly-Minol. Just rub it on the soles of both feet before going to bed. No matter where the Arthritis is, rub Sulgly-Minol on the bottom of the feet. A bottle will last about a month, and that will be enough to tell whether it will help or not. If it helps you should keep up the treatment for another

month, and after that, just as you feel. If my feet feel a little sore from too much activity I rub some on for a night or two, that is all there is to it.

Sulphur has been known for many years, as an effective treatment for boils, and acne. Often being taken as the old familiar, Sulphur and Molasses mixture. Also Sulphur baths have for centuries been taken by those suffering from ailments of a rheumatic nature. In my opinion, the benefits of sulphur are more surely, and completely obtained, through the use of Sulgly-Minol, applied to the soles of the feet. The results obtained through the use of this simple, inexpensive remedy have been acclaimed by many as a God-send.

If you want to try a bottle, just send your name and address to me, with remittance, and I will send a bottle. If you do not need it, tell some suffering friend or relative. Those of us who have, or have had Arthritis, know how hopeless our condition seems at times, and how discouraged we sometimes feel. Often I have asked the question, "Why can't something be done to help me?" I sincerely believe that here is something that will help people who are suffering from Arthritis, and want to tell as many as I can about it. I am sure you do too.

Sincerely yours,

/s/ WALTER W. GRAMER.

Price

4 oz. Bottle (about a month's supply) \$2.00

EXHIBIT D

● A Light Should Not Be Hidden

Testimonials

• Below we give you a few of the many testimonials we have received from people who have been relieved from the pains of Arthritis and Rheumatism by using "Sulgly-Minol." The original copies of these letters are in our files and many more. Write these people if you care to; they will be only too glad to tell you what they know about "Sulgly-Minol."

One Bottle Will Tell

•

• Mr. Dennis Roberts, Bessemer, Michigan, Writes:

"I am improving right along, gaining strength in my legs, and am not troubled with constipation, and have no pain whatever. Am sending money for a dozen bottles as several have asked me to get some for them."

Mr. Roberts stated he had Arthritis for years; he also stated he was considered a hopeless cripple by folks of his community; today he claims he is leading a happy, normal life, and works his little farm again, thanks to "Sulgly-Minol."

•

• Albert H. Cherry, 453 East 6th St., New Richmond, Wisc., Writes:

"I am very glad if I have been able to help in any way, to assure the future supply of "Sulgly-Minol" to myself and others who might be suffering from

arthritis. The relief I have had from the use of 'Sulgly-Minol' is ample payment for anything I can do to further its production."

•

- Mr. Cecil E. Biesecker, R. 5, Eau Claire, Wisc.,
Writes:

"I have been using it for several months and it surely has helped my case. It takes the stiffness and soreness out of my legs and knees so I can get up and down much easier. I have told several of my friends suffering from arthritis and you will be hearing from them."

•

- Mrs. Oscar Runholt, Cottonwood, Minnesota:

"'Sulgly-Minol' has helped me so much after being down for eight months with arthritis. People ask me what I've done, I look so good again."

•

- Mrs. Riley Bugh, 1014 N. Jefferson St., Hartford City, Ind., Writes:

"I am happy to say it has done me a world of good, and don't want to be without it. Have recommended it to several of my friends. I can sleep all night now without my knees aching and that is something I haven't done for nearly a year, also the soreness and stiffness are leaving. Thanks a million for your wonderful remedy."

•

- Mrs. Catherine E. Stephenson, 601 E. Water St., Northfield, Minn., Writes:

"I wish to express my thanks to you for your

wonderful arthritis remedy, 'Sulgly-Minol.' My hands were getting so bad I could hardly use them; part of a bottle of 'Sulgly-Minol' almost cured them. My legs are stronger and do not get tired as they did. My nephew is using it for athlete's foot and is improving more and more every day. A sister has been using it for about two weeks and it has helped a lot already. I am telling everyone I see about it, as I think it is a miracle."

•

So we could go on and on, but we feel that the above letters prove beyond a doubt that "Sulgly-Minol" has broken the grip of arthritis, in many cases. Here is what hundreds of people claim they have been hoping and praying for—simple, inexpensive relief from the pains of arthritis.

By All Means Try "Sulgly-Minol"

In writing any of the above, please enclose a self-addressed, stamped envelope.

Partial List

Users of Sulgly-Minol

(Solution of Sulphur)

By All Means Try Sulgly-Minol

Following Are the Names and Addresses of Some of the People Who Have Used "Sulgly-Minol"

We Have Many More. Write Them for
Their Opinion as to Its Merits.

Their Letters Have Come to Us Unsolicited

Mr. Denis Roberts, Route 1, Box 58 B, Bessemer,
Michigan.

Mrs. Edna A. Hargrave, 627½ 7th Avenue, Bara-
boo, Wisconsin.

Miss Bertha Lindemann, 6007 Burwood Ave., Los
Angeles 12, Calif.

Cecil E. Beisecker, R.R. No. 5, Eau Claire, Wis-
consin

Elias Linbakka, 524 Lambart Street, Negaunee,
Michigan

Mrs. Goss, Care Ivey's Delicatessen, Nicollet Ave-
nue, Minneapolis, Minn.

Mrs. Catherine E. Stephenson, 601 E. Water St.,
Northfield, Minn.

Mrs. Haydt Ammans, 1325 Middlebrook Pike,
Knoxville 16, Tenn.

Mrs. Arlene Johnson, 920 Carney Blvd., Marinette,
Wisconsin

Wm. H. Zimmerman, Whittemore, Iowa

Mrs. John Bliese, 915 N. 3rd Ave., Wausau, Wis.

Mrs. Katherine Ernst, Roscoe, So. Dakota

Clem Niebur, Hampton, Minnesota

Mrs. Hans Vangen, 213—3rd St. S.W., Minot, N.
Dakota

Mrs. F. E Christensen, 319—4th St., Manistee, Mich.

Mrs. Hartlet, Norwood, Minn.

Josephine Wochtritt, 102 N. 2nd Ave., Wausau,
Wisconsin

Bessie Shipman, 2711 Summit St., Toledo, Ohio

Mr. J. D. Mathis, 6 Orleans, Memphis 3, Tennessee

John Johnson, 519 Taylor St., Flint, Michigan

Katie Fre Schmidt, 72 Society St., Charleston 8,
So. Carolina

Mr. F. O. Wendler, R. 1, Monett, Missouri

Sam Lee, New Folden, Minnesota

William Wolter, 5030 George St., Chicago 41,
Illinois

Mrs. G. E. Gruinuse, 365 Ill. Ave., Galesburg, Illinois

Will Hale, Wisconsin Dells, Wisconsin

Mrs. Martha M. Cratty, 212 S. 4th St., Vincennes,
Indiana

Mrs. Alva M. Overman, R. d. No. 5, Hillsboro, Ohio

Cora Morrow, 4852 Calumet Ave., Chicago 15,
Illinois

Mrs. H. L. Eickmeyer, 1305 Columbus Ave., Bay
City, Michigan

J. R. Michaels, R. R. 1, Watertown, So. Dakota

Mrs. Louise Ahrens, P.O. Box 4, Chaldron, Nebraska

Wm. H. Wilkening, Moro, Illinois

Bert Hayer, 1013 W. 25th St., Fort Worth, Texas

Stephan Galinatz, Box 35, Wakefield, Michigan

Mrs. Gusta Johnson, R. 1, Douglas, No. Dakota

Mrs. Albert Maggs, 504 So. Jefferson St., Muncie,
Indiana

Mrs. Marge A. C. Oldroyd, Thorp, Wisconsin

Anna Jauanroich, Box 382, Carson Lake, Minnesota

Letha Norwood, 2036 N. Quaker, Tulsa, Oklahoma

Mrs. Edgar Smith, 623 So. Main St., Pendleton,
Oregon

Mrs. Helen Brandt, 400 W. 7th St., Morris, Minne-
sota

Edith Rohrer, 2770 S. James Place, Altadena,
California

Mrs. John Erickson, c/o Cardiff, Pierie, Idaho

Hanna J. Rasmussen, E. Stanwood, Washington

Mrs. Trian Foley, c/o 1021 Morie Ave. So., St. Paul,
Minnesota

Miss Marie Ratkovich, 3153 So. Harding Ave., Chi-
cago 23, Illinois

In writing any of the above, please enclose a self-
addressed, stamped envelope.

[Endorsed]: Filed August 30, 1950.

[Title of District Court and Cause.]

No. 15426

MOTION FOR SUMMARY JUDGMENT

Claimant, Walter W. Gramer, moves the court to
enter, pursuant to Rule 56 of the Federal Rules of

Civil Procedure, a summary judgment in claimant's favor dismissing the action, on the ground that there is no genuine issue as to any material fact and that claimant is entitled to a judgment as a matter of law.

This motion is based upon:

- (a) The pleadings on file in this action.
- (b) Stipulation between the parties, acting through counsel, dated August 28, 1950, on file in this action.

TODD, HOKANSON & WHITE,

/s/ RICHARD S. WHITE,

Attorneys for Claimant.

Copy received Aug. 30, 1950.

[Endorsed]: Filed August 30, 1950.

In the District Court of the United States for
the Western District of Washington, Northern
Division

No. 15426

UNITED STATES OF AMERICA,

Libelant,

vs.

213 bottles, more or less, and 10 bottles, more or
less, of an article of drug labeled in part:

“4 Fluid Ounces Gramer’s Sulgly-Minol, a
Solution of Sulphur, Glycerine, Sulphurated
Lime and Isopropyl Alcohol 6%,” etc.

Respondent,

and

UNITED STATES OF AMERICA,

Libelant,

vs.

143 bottles, more or less, of an article of drug labeled
in part:

“4 Fluid Ounces Gramer’s Sulgly-Minol, a
Solution of Sulphur, Glycerine, Sulphurated
Lime and Isopropyl 6%,” etc.

Respondent.

ORDER GRANTING SUMMARY JUDGMENT
AND DISMISSAL

This cause came on to be heard on motion of claimant Walter W. Gramer for a summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and libelant being represented by J. Charles Dennis, United States Attorney, and claimant being represented by his attorneys, Todd, Hokanson & White, by Richard S. White, and the court having considered the pleadings in the action and the stipulation referred to in claimant's motion, and it appearing from said stipulation that the issues raised by the libelant in the above-entitled consolidated cause were adjudicated in favor of the claimant after a trial on the merits in an action entitled "United States of America vs. Walter W. Gramer," Criminal Cause No. 7984 in the District Court of the United States in and for the District of Minnesota, Fourth Division, and this court having heretofore and on the 28th day of August, 1950, entered its order denying libelant's motion to strike claimant's affirmative defense, and the court having concluded that claimant Walter W. Gramer has a complete legal defense to the above-entitled consolidated cause, and the court having found that there is no genuine issue as to any material fact, and having concluded that claimant Walter W. Gramer is entitled to judgment as a matter of law,

It Is Hereby Ordered, Adjudged and Decreed:

1. That claimant's motion for summary judgment be and the same is hereby granted.

2. That the above-entitled consolidated action be and the same is hereby dismissed on the merits.

Done in Open Court this 11th day of September, 1950.

/s/ JOHN C. BOWEN,
Judge.

Presented by:

/s/ RICHARD S. WHITE, of
TODD, HOKANSON & WHITE,
Attorneys for Claimant.

Approved as to form only:

/s/ J. CHARLES DENNIS,
U. S. Atty.

[Endorsed]: Filed September 11, 1950.

[Title of District Court and Cause.]

No. 15426

NOTICE OF APPEAL

To Walter W. Gramer, Claimant, and to Todd, Hokanson & White, his attorneys; and to The Honorable John C. Bowen, Judge, and Millard P. Thomas, Clerk of the above-entitled Court:

You and each of you will please take notice that the libelant, United States of America, hereby appeals from that certain order entered on September 11, 1950, in the above-entitled consolidated cause, granting summary judgment and dismissal, hereby

appealing from the whole of said order of the court, and each and every part thereof, unto the United States Court of Appeals for the Ninth Circuit.

Dated this 20th day of October, 1950.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ VAUGHN E. EVANS,
Assistant United States
Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed October 20, 1950.

[Title of District Court and Cause.]

Nos. 15426 and 15432.

CERTIFICATE OF CLERK TO
APOSTLES ON APPEAL

United States of America,
Western District of Washington—ss:

I, Millard P. Thomas, Clerk of the above-entitled court, do hereby certify that I am transmitting as the Apostles on Appeal in these causes all of the original papers in the file dealing with the above-entitled actions or proceedings, the same being the complete record on file in said causes; and that said original papers hereby transmitted constitute the apostles on appeal from that certain order granting summary judgment and dismissal filed and entered on September 11, 1950, to the United States Court of Appeals at San Francisco, California, and are identified as follows:

Cause No. 15432

1. Libel of Information, filed Jan. 10, 1950.
2. Praeceptum for process, filed Jan. 10, 1950.
3. Affidavit of Publication, filed Jan. 19, 1950.
4. Marshal's Return of Monition and Attachment, filed Jan. 27, 1950.
5. Claim of Walter W. Gramer, filed Jan. 31, 1950.
6. Stipulation Extending Time to Answer to March 1, 1950, filed Jan. 31, 1950.
7. Stipulation Extending Time to May 15, 1950, to answer, filed Apr. 10, 1950.
8. Answer of Claimant, filed May 16, 1950.
9. Claimant's Demand for Jury, filed May 18, 1950.

Cause No. 15426

1. Libel of Information, filed Jan. 3, 1950.
2. Praeceptum for process, filed Jan. 3, 1950.
3. Affidavit of publication, filed Jan. 9, 1950.
4. Marshal's Return on Monition and Attachment, filed Jan. 10, 1950.
5. Claim of Walter W. Gramer, filed Jan. 31, 1950.
6. Stipulation extending time to answer to March 1, 1950, filed Jan. 31, 1950.
7. Stipulation extending time to answer to March 31, 1950, filed Feb. 28, 1950.

8. Stipulation extending time to answer to May 15, 1950, filed Mar. 31, 1950.

9. Answer of Claimant, filed May 16, 1950.

10. Claimant's Demand for Jury, filed May 16, 1950.

11. Claimant's Motion to Consolidate with Cause No. 15432, filed May 16, 1950.

12. Claimant's Note for Motion Calendar, filed May 16, 1950.

13. Order Consolidating Causes, filed May 22, 1950.

14. Libelants' Motion to Strike Affirmative Defense in Answers, filed June 5, 1950.

15. Brief in Support of Motion to Strike, filed June 21, 1950.

16. Notice of Hearing on Motion to Strike, filed Aug. 10, 1950.

17. Brief in Answer to Libelant's Motion to Strike Claimant's Affirmative Defense, filed Aug. 26, 1950.

18. Order Denying Libelant's Motion to Strike, filed Aug. 28, 1950.

19. Claimant's Motion for Summary Judgment, filed Aug. 30, 1950.

20. Note for Calendar, filed Aug. 30, 1950.

21. Stipulation Regarding Contents of Bottles, and Literature in Causes No. 15426 and 7984-Crim.

of District of Minnesota, Fourth Division, (Exhibit's Numbered "A," "B," "C" and "D" attached) filed Aug. 30, 1950.

22. Order Granting Summary Judgment and Dismissal, filed and entered Sep. 11, 1950.

23. Libelant's Notice of Appeal, filed Oct. 20, 1950.

24. Order Staying Enforcement of Judgment Pending Appeal, filed and entered Nov. 2, 1950.

25. Statement of Points on Appellant's Intention to Rely, filed Nov. 2, 1950.

26. Designation of Contents of Record on Appeal, filed Nov. 2, 1950.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office on behalf of appellant for preparation of the apostles on appeal in this cause, to wit:

Notice of Appeal—\$5.00 and that said amount has not been paid to me for the reason that the appeal is being prosecuted by the United States of America.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 15th day of November, 1950.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: No. 12741. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Walter W. Gramer, Claimant of 213 Bottles, more or less, etc., and Claimant of 143 Bottles, more or less, of an article of drug, etc., Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed November 17, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit
No. 12741

UNITED STATES OF AMERICA,

Appellant,

vs.

213 BOTTLES . . . SULGLY-MINOL, ETC., and
WALTER W. GRAMER,

Appellees.

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

Appellant hereby states the points on which it
intends to rely on appeal:

(1) The District Court erred in denying libelant's motion to strike the claimant's affirmative defense.

(2) The District Court erred in holding that the acquittal of the claimant, Walter W. Gramer, in a prior criminal proceeding under 21 U.S.C. 333 constituted a bar to the instant seizure and condemnation action under 21 U.S.C. 334.

(3) The District Court erred in granting the claimant's motion for summary judgment and in dismissing the instant consolidated proceedings.

Dated: November 14, 1950.

Respectfully submitted,

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ VAUGHN E. EVANS,
Assistant U. S. Attorney.

Receipt of Copy acknowledged.

[Endorsed]: Filed November 16, 1950.

